WHEN THE CITY ACQUIRES YOUR PROPERTY

CITY OF FREMONT



Table of Contents

What right does the City have to acquire my property?	1
Who made the decision to buy my property?	1
How will the City determine how much to offer me for my property?	2
What is Fair Market Value?	2
How does an appraiser determine the fair market value of my property?	2
Will I have a chance to talk to the appraiser?	2
How soon will the City give me a written purchase offer?	3
What is in the City's statement of the basis for its determination of just compensation?	3
Must I accept the City's initial offer?	4
May I have someone represent me during negotiations?	4
If I agree to accept the City's offer, how soon will I be paid?	4
What happens if I don't agree to the final purchase offer by City?	4
What happens if the City condemns my property?	5
What is an order for possession?	5
What can I do if I am not satisfied with the court's determination?	6
Will I have to pay any settlement costs?	6
WHAT HAPPENS TO THE LOAN ON MY PROPERTY?	6
May I keep any of the buildings or other improvements on my property?	6
Can the City take only a part of my property?	7
Will I have to pay rent to the City after my property is acquired?	7
How soon must I move?	7
What is Title II of the Uniform Act?	8
My property is worth more now than when I bought it. Must I pay capital gains tax on the	
increase?	8
I'm a veteran. How about my G. I. Loan?	8
Is it possible to donate property to the City?	8

WHEN THE CITY ACQUIRES YOUR PROPERTY City of Fremont

In the development of needed community facilities to improve the City of Fremont (City) for all its residents, the City sometimes must acquire real property to build the needed facilities. If you own real property that must be acquired for a City project, you are protected by the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (Uniform Act), or similar state legislation AND the eminent domain law of the State of California.

This brochure describes many of the important protections of the Uniform Act. It also gives general information about public acquisition of real property, under State law, which should be useful to you.

Should you desire further information, please contact Real Property Manager, Randy Sabado at 510-494-4715, in the City's Community Development Department. We firmly believe that full communication with you will greatly ease your concerns and provide a more efficient and effective community improvement program.

WHAT RIGHT DOES THE CITY HAVE TO ACQUIRE MY PROPERTY?

Every public agency has certain powers that are necessary for it to operate effectively. For example, States have the power to levy taxes and the power to maintain order. Another power is the power to acquire private property for public purposes. This is known as the power of eminent domain.

The City's powers of eminent domain are balanced by the protections of the Fifth and Fourteenth Amendments of the U. S. Constitution and by the State Constitution and eminent domain laws. These laws guarantee that if a public agency takes private property for a public use it must pay "just compensation" to the owner.

Further, under the Uniform Act, the owner has additional protections, some of which are explained in this brochure.

WHO MADE THE DECISION TO BUY MY PROPERTY?

The decision to acquire a specific property for a City project usually involves many City Department, people, and many decisions. The final decision to proceed with the project is made by the City Council after a thorough review of the project and the impacted properties, and includes public hearings to obtain the views of interested citizens.

If you have any questions about the project or the selection of your property for acquisition, you should contact the City Real Property Agent.

HOW WILL THE CITY DETERMINE HOW MUCH TO OFFER ME FOR MY PROPERTY?

Before making you an offer to acquire your property, the City will obtain at least one and sometimes two appraisals of your property by competent real property appraisers who are licensed by the State Office of Real Estate Appraiser, and who are familiar with eminent domain appraisals and local property values. The appraiser will inspect your property and state his professional opinion of its current fair market value in an appraisal report. After the appraiser has completed the report, a review appraiser may recheck the work to assure that the estimate is fair and the work conforms to professional appraisal standards.

The City is required to offer you "just compensation" for your property. This amount cannot be less than the fair market value of your property, as determined by the City on the basis of its appraisal(s).

WHAT IS FAIR MARKET VALUE?

Fair market value is defined as the amount of money that would be agreed to for the property by willing seller, who does not have to sell the property, and a willing buyer, who does not have to buy the property, both of whom are fully aware of the uses and purposes of the property.

The fair market value of a property is the foundation for the payment of "just compensation." Fair market value does not take into account intangible elements such as sentimental value, good will, business profits, or any other "special" value that your property may have for you as an individual.

HOW DOES AN APPRAISER DETERMINE THE FAIR MARKET VALUE OF MY PROPERTY?

Each parcel or real property is different and therefore no single formula can be devised to appraise all properties. Among the factors an appraiser typically considers in estimating the value of real property are:

- How it compares with similar properties in the area that have been sold recently.
- How much it would cost to reproduce the buildings and other structures, less any depreciation.
- How much rental income it could produce.

WILL I HAVE A CHANCE TO TALK TO THE APPRAISER?

YES. You will be contacted and given the opportunity to accompany the appraiser on the inspection of your property. You may then inform the appraiser of any special features which you believe may add to the value of your property. It is your best interest to provide the appraiser with all the useful information you can to insure that nothing of allowable value will be

overlooked. If you are unable to meet with the appraiser, you may wish to have a person who is familiar with your property represent you.

HOW SOON WILL THE CITY GIVE ME A WRITTEN PURCHASE OFFER?

The timing of a purchase offer depends on the following factors:

- 1. The amount of work required to appraise your property,
- 2. The availability of funding for the project, and
- 3. Possible project delays caused by factors outside the control of the City.

Typically, where items two and three above are not involved, you can expect a written purchase offer within 60 days of completion of the appraisal. The appraisal of real property rights needed from a single family residence takes approximately two months to complete from the date the property is inspected. A business or industrial property, on the other hand, can take several months to complete due to the much greater complexity involved.

Once the appraisal is completed, the City must promptly give you a written offer to acquire your property for the full amount determined to be just compensation—and must do so promptly. Along with the offer, you will receive a written appraisal summary statement explaining the basis for the determination of just compensation. No negotiations can take place before you receive this statement and the written purchase offer.

State eminent domain laws require that the City pay you the fair market value for your property and no less; however, the City cannot buy your property for more than it is worth. If the property is an owner-occupied residential property containing no more than four residential units, California law provides that the owner, upon request, may review a copy of the appraisal upon which the offer is based.

WHAT IS IN THE CITY'S STATEMENT OF THE BASIS FOR ITS DETERMINATION OF JUST COMPENSATION?

The City's statement of the basis for its determination of just compensation must be provided to you with the written purchase offer. Among other things, this statement must include:

- An accurate description of the property to be acquired.
- A list of the improvements covered by the offer.
- The amount of the offer.
- An indication that the offer does not reflect any relocation payments or other relocation assistance which you may receive under other regulations.
- The recognized definition of the term "fair market value" or the equivalent term.

MUST I ACCEPT THE CITY'S INITIAL OFFER?

NO. You are entitled to present your evidence as to the amount you believe is the value of our property and to make suggestions for changing the terms and conditions of the offer. The City must make reasonable efforts to consider and respond to your evidence and suggestions. When fully justified by the available evidence of value, the City may adjust its offer.

MAY I HAVE SOMEONE REPRESENT ME DURING NEGOTIATIONS?

YES. If you would like an attorney, or anyone else, to represent you during negotiations, please inform the City in writing. However, there are no provisions for the City to pay the costs of any such representation.

IF I AGREE TO ACCEPT THE CITY'S OFFER, HOW SOON WILL I BE PAID?

If you reach a voluntary agreement to sell your property and your ownership (title) is clear, payment will be made at a mutually acceptable time. Generally, this should be possible within 45 to 120 days after you sign a purchase contract. If the title evidence obtained by the City indicates that further action is necessary to show that your ownership is clear, you may be able to hasten the payment by helping the City to obtain the necessary proof. (Title evidence is basically a legal record of the ownership of the property. It identifies the owners of record and lists the restrictive deed covenants and recorded mortgages, liens and other instruments affecting your ownership of the property.)

WHAT HAPPENS IF I DON'T AGREE TO THE FINAL PURCHASE OFFER BY CITY?

Sometimes, when private property is required for public purposes, the owner and the City cannot agree on the terms of sale. Our earnest hope is to avoid a proceeding in eminent domain with the added time, concern and cost to everyone. In cases where negotiations have reached an impasse and possession of the property is required to allow the project to proceed to construction, the City must resort to the use of the eminent domain process. Eminent domain proceedings are often referred to as condemnations.

An owner's rights are guaranteed by the Federal and State constitutions and applicable State laws. The principal right is that just compensation must be paid. When there are indications that agreement on the purchase of your property cannot be reached, the City will initiate condemnation proceedings. However, even though a condemnation proceeding has been filed, you can still try to reach an agreement with the City regarding the sale of the needed property.

WHAT HAPPENS IF THE CITY CONDEMNS MY PROPERTY?

You will be notified of the action and given at least 15 days notice to attend a public hearing with the City Council to determine the need and necessity for the project. The City Council will not respond to arguments regarding valuation. The issue of compensation will be addressed as part of the eminent domain process by the court. After the hearing, assuming need and necessity have been substantiated; the City will file a condemnation suit.

Condemnation suit documents will be prepared by the City and filed with the Superior Court of the County of Alameda. A summons and complaint will then be served on all parties having an interest in the parcel being acquired. The parties served must file an answer with the court within 30 days.

At the trial for the condemnation proceeding, you will have an opportunity to introduce your evidence regarding the value of your property. Of course, the City will have the same right. After the evidence of all parties has been heard, the court or jury will determine the amount of just compensation.

To help you in presenting your case in a condemnation proceeding, you may wish to consider employing an attorney and an appraiser. Effective January 1, 2006, California Code of Civil Procedure §1263.025 requires the City of Fremont to offer to reimburse a property owner for the reasonable cost of an independent appraisal (up to \$5,000) ordered by the property owner, if the City plans to acquire the needed property rights by eminent domain proceedings. Certain conditions must be met in order to qualify for such reimbursement. Please speak to the City's Real Property representative for more information.

WHAT IS AN ORDER FOR POSSESSION?

An order for possession is a procedure within a condemnation action. This procedure allows the City to have the use of your property prior to a negotiated settlement or prior to an award of just compensation in court. This procedure is used typically only where the use of your property is necessary to accomplish timely construction of the project for which your property is required.

To obtain an order for possession, the City must deposit with the court (or in an escrow account with the State) an amount not less than the City's appraisal of the fair market value of the property. Ordinarily, after a motion and hearing with the court, the property owner and any lessees may withdraw their share of the deposited amount, LESS any amounts necessary to pay off: 1) any mortgage, 2) any liens on the property, or 3) any sums necessary to resolve any special ownership problems. Early withdrawal of your share of the money will not affect your right to seek additional compensation for your property; however, it will affect other rights in the eminent domain proceedings. It is recommended that you have the help of an attorney if you intend to withdraw the deposited amount. Should the negotiated settlement or court award exceed the amount deposited by the City and withdrawn, you will be paid the difference, plus any interest that may be provided by State law. If the negotiated settlement or court award is less than the amount withdrawn, you will be required to pay the difference back to the City.

WHAT CAN I DO IF I AM NOT SATISFIED WITH THE COURT'S DETERMINATION?

If you are not satisfied with the court judgment, you may file an appeal with the appropriate Appellate Court for the area where your property is located. The City may also file an appeal if it believes the amount of the judgment is too high.

WILL I HAVE TO PAY ANY SETTLEMENT COSTS?

You will be responsible for the payment of the balance on any mortgage on your property. Also, if your ownership is not clear of encumbrances, you may have to pay the cost of clearing them. Since this is a direct conveyance of real property from the property owner to the City, there is no real estate commissions involved, and the City will not recognize or pay any such real estate commission. You will not be responsible for the reasonable and necessary costs of:

- Services required to complete the sale, recording fees, transfer taxes and any similar expenses which are incidental to transferring ownership to the City.
- Penalty costs and other charges necessary to permit prepayment of an earlier recorded mortgage on the property which was entered into in good faith.
- Real property taxes covering the period after the City acquires your property.

The City will identify these items in a Settlement Cost Statement to be given to you at the time of settlement or soon after the court award of compensation, if the property is acquired by condemnation. Ordinarily, if you have paid any of these expenses yourself, you will be repaid at that time. If you later discover other similar costs for which you should be repaid, you should request repayment from the City within six months after the acquisition. The City will assist you in filing a claim for these costs. Finally, if you believe that you were not property repaid, you may appeal—first to the City, and if not satisfied, then to the courts.

WHAT HAPPENS TO THE LOAN ON MY PROPERTY?

Payment to satisfy outstanding loans or liens will be made through a title company escrow as in any other real estate transaction.

MAY I KEEP ANY OF THE BUILDINGS OR OTHER IMPROVEMENTS ON MY PROPERTY?

Sometimes improvements on a property are not required by the City. This might include such items as a fireplace mantel, your favorite shrubbery, or even an entire house. If you wish to keep any improvements, please let your Acquisition Agent know as soon as possible.

If you do arrange to keep any improvement(s), the City will deduct its salvage value from the purchase price you would otherwise receive. (The salvage value of an item is its probable selling price if offered for sale on the condition that the buyer will remove it at his own expense.) Of

course, if you arrange to keep any real property improvement (such as a fireplace mantel or a shrub), you will not be entitled to receive a relocation payment for the cost of moving it to a new location.

CAN THE CITY TAKE ONLY A PART OF MY PROPERTY?

YES. When only a part of your property is needed, every reasonable effort is made to ensure that you do not suffer a financial loss. The total payment by the City will be for the property the City purchases and for any loss in the square foot value to your remaining property. Also, if any remaining part would have little or no utility or value to you, the City must offer to buy that remaining part from you.

The determination of any loss in the square foot value to your remaining property is an appraisal problem involving variables in which a brief explanation might not adequately cover all situations. Should this situation be involved, the City's Real Property representative will fully explain the effect of a part purchase on your remaining property.

WILL I HAVE TO PAY RENT TO THE CITY AFTER MY PROPERTY IS ACQUIRED?

If you are allowed to remain in the property after acquisition, you will be required to pay a fair rent to the City. Generally, such rent will not be more than that charged as rent for the use of similar property in your area.

HOW SOON MUST I MOVE?

Every reasonable effort will be made to give you ample time to relocate after the acquisition of your property. Except in an unusual instance where there is an urgent need for your property for an emergency, you cannot be required to move from your residence or to move your business or farm operation without at least 90 days' advance written notice of the date your move is required. In most cases a mutually satisfactory arrangement can be worked out.

If you reach a voluntary agreement to sell your property, you cannot be required to move before you receive the agreed purchase price. In the case of a condemnation, you cannot be required to move before the estimated fair market value of the property has been deposited with the court (or into escrow with the State) so that you can withdraw your share.

If you are being displaced from your residence, decent, safe and sanitary replacement housing must be available before you can be required to move.

WHAT IS TITLE II OF THE UNIFORM ACT?

Title II (Uniform Relocation Assistance) of the Uniform Act specifies certain relocation payments and other assistance which the City must provide to families, individuals, businesses, farms and nonprofit organizations when they are displaced and their personal property must be moved.

The City must furnish you with a full explanation of the relocation benefits to which you may be entitled. If you are eligible for these benefits, you will be contacted by the City's Relocation Advisor. To fulfill its relocation obligations to you, the City must be kept information of your plans to move.

MY PROPERTY IS WORTH MORE NOW THAN WHEN I BOUGHT IT. MUST I PAY CAPITAL GAINS TAX ON THE INCREASE?

According to the Internal Revenue Service, the sale of property to a governmental agency for public purposes comes under the definition of an "involuntary conversion." In most cases when the City acquires real property, the property owner may postpone the payment of Federal capital gains taxes on any profit from the sale IF the profit is reinvested in similar property with a certain replacement period. To take advantage of this right, you should file the details in a statement with your Federal income tax return for the tax year in which you realize the gains.

If you have any questions about the IRS rules, you should discuss your particular circumstances with your personal tax advisor or your local IRS office.

I'M A VETERAN. HOW ABOUT MY G. I. LOAN?

After your G. I. Home mortgage loan has been repaid, you will be permitted to obtain another G. I. Loan to purchase another properly. Check on such arrangement with your nearest VA office.

IS IT POSSIBLE TO DONATE PROPERTY TO THE CITY?

YES. However, prior to accepting any donation of real property, the City must inform the owner <u>in writing</u> of the amount it believes to be just compensation for the property. The property owner must indicate in writing that—although he understands he cannot be required to sell his property for less than just compensation—he voluntarily agrees to do so.